In the High Court of Punjab and Haryana, Chandigarh.

Civil Revision No. 3648 of 2007

Date of Decision: 15.10.2007

Suraj Kumar Verma

…Petitioner

Versus

Gunita Verma

…Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Tajender K. Joshi,Advocate
for the petitioner.

Mr.Namit Gautam, Advocate
for Mr. Vijay Gularia, Advocate
for the respondent.

RAJESH BINDAL, J.

The present petition has been filed being aggrieved against the order passed by the learned Additional District Judge, Chandigarh, dated May 26, 2007 in a petition under Section 13-B of the Hindu Marriage Act, 1955 (for short "the Act") seeking divorce by mutual consent, whereby the parties were directed to appear in person.

Learned counsel for the petitioner submitted that the petitioner/husband is living in Australia and will not be able to attend the proceedings. Even otherwise the issue has been amicably settled between the parties before this Court in the proceedings under Section 438 Cr.P.C. wherein it was agreed that the entire claim of the respondent will be settled on a payment of Rs.11,00,000/- by the petitioner to the respondent. This was in addition to Rs. 89,340/- handed over to the respondent on the date when the entire issue was settled. It was further alleged that part of the payment has

been made and part is to be paid on the date when the final decision in the divorce petition is taken. On the issue as to whether the personal presence of the petitioner is required at the time of hearing before the Court, he has relied upon **Padmakiran Rao (Mrs.) v. B. Venkateraman Rao 1996(2) HLR 271 (AP), Neelima Chopra v. Anil Chopra 1987(1) HLR 187 (Delhi)** and **Subhajyati Majumdar v. Smt.Arunima Majumdar 1992(1) HLR 438 (Cal).** He submits that the petitioner will furnish a fresh affidavit from Australia and father of the petitioner will appear in the Court on his behalf.

On the other hand, learned counsel for the respondent submitted that he has no objection to the representation of the petitioner through his attorney and further that the respondent-wife who is available here will appear in person in the Court on the date fixed so that the decree by mutual consent is passed.

Having heard learned counsel for the parties, I find merit in the contentions raised by learned counsel for the petitioner to the effect that the presence of the petitioner in person is not the mandatory requirement in the proceedings under Section 13-B of the Act. A Division Bench of Andhra Pradesh High Court in **Padmakiran Rao's case** (supra) held as under:-

> "Relying on the wording "after hearing the parties" in sub-section (2) of Section 13-B, the learned Subordinate Judge took the view that both the parties to the marriage should necessarily be present in the Court for examination and the filing of affidavit will not be a substitute for that requirement. The learned Judge observed that unless the parties are personally present, it would be difficult for the Court to assess whether they have changed their mind since the date of filing the petition. We do not think that this is a correct view to be taken. 'Hearing' does not necessarily mean that both parties have to be examined. The word 'hearing' is often used in a broad sense which need not always mean personal hearing. In any case, the evidence of one of the parties, i.e., the appellant herein was recorded by the Court. Thus, even if the word 'hearing' is construed in a literal sense that requirement must be deemed to have been satisfied in the instant case in view of the examination of the appellant. On the husband's side

> there is evidence in the form of an affidavit which can be legitimately taken into account in view of Order XIX Rule 1 CPC. It is not as if the affidavit has been doubted or the other party wanted to cross-examine the deponent of the affidavit. When there are no suspicious circumstances or any particular reason to think that the averments in the affidavit may not be true, there is absolutely no reason why the Court should not act on the affidavit filed by one of the parties. The learned Judge fell into error of law in observing that he cannot look into the affidavit at all. There is also a valid reason for non-attendance of the respondent in the Court. In the circumstances, the order of the lower Court is set aside and the appeal is allowed. We declare that the marriage between the parties shall stand dissolved with effect from the date of this judgment and a decree for divorce be passed. We make no order as to costs".

The Delhi High Court in **Neelima Chopra's case** (supra) held as under:-

> "For arriving at such a satisfaction, I fail to understand the need for the parties to appear in person. In order to arrive at this satisfaction, it is open to the parties to file affidavits or authorise someone to make a statement testifying to the correctness of the contents of the petition. If both the parties, by way of affidavits or through counsel, state that they were married, and are able to produce proof of the marriage, and that they have been living separately and have not been able to live together for the prescribed period, then I see no reason as to why the Court should not record its satisfaction as envisaged by Section 13-B(2) and to pass a decree for divorce thereon".

Once the parties have already filed a petition for divorce under Section 13-B of the Act by mutual consent and are not in a position to be present in the Court in person because of certain unavoidable circumstances

and if the Court is satisfied from the facts and circumstances available on record that the consent of the parties is still subsisting and there is no change of their mind since the date of filing of the petition, the presence of the parties in person need not be pressed.

In the present case, from the facts on record, it is evident that the petitioner, who is outside the Country, is still reiterating his earlier statement seeking divorce by way of affidavit to be filed in the Court through his father and the respondent-wife will appear in person, in the Court to reiterate her statement. Under the circumstances, the direction of the learned Court below asking the parties to appear in person will not be justified.

Accordingly, the petition is allowed, the direction of the learned Court below for appearance of the parties in person is modified to the extent that the petitioner is permitted to appear through his attorney.

The petition is disposed of accordingly.

(Rajesh Bindal)
Judge

October 15, 2007
"DK"